



THE BOC GROUP, INC.
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02 MAY 2007

In re Application of	:	
Tunna et al.	:	
Application No.: 10/578,546	:	DECISION
PCT No.: PCT/GB04/04660	:	
Int. Filing Date: 04 November 2004	:	ON
Priority Date: 10 November 2003	:	
Attorney Docket No.: M04B100	:	PETITION
For: Improvements In Dry Pumps	:	

This is in response to the petition under 37 CFR 1.47(a) filed on 07 March 2007.

BACKGROUND

This international application was filed on 04 November 2004, claimed an earlier priority date of 10 November 2003, and designated the U.S. The International Bureau transmitted a copy of the published international application to the USPTO on 26 May 2005. The 30 month time period for paying the basic national fee in the United States expired at midnight on 10 May 2006. Applicants filed *inter alia* the basic national fee on 05 May 2006.

On 04 January 2007, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the submission of an executed oath or declaration compliant with 37 CFR 1.497(a) and (b) and the payment of the surcharge under 37 CFR 1.492(h).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor.

Regarding **requirement (1)**, the \$200.00 petition fee was paid on 07 March 2007.

Regarding **requirement (2)**, petitioner urges that the absence on the declaration of the signature of joint inventor Allan McDiarmid be excused because he allegedly "has refused to execute the application. Counsel's attention is respectfully drawn to MPEP 409.03(d), which states in part:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by

counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP § 106. It is reasonable to require that the inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. In re Gray, 115 USPQ 80 (Comm'r Pat. 1956).

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted. Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal. When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

Review of the petition and accompanying evidentiary documentation establishes that Mr. McDiarmid has refused to execute the application within the meaning of 37 CFR 1.47(a). Therefore, requirement (2) has been satisfied.

Regarding **requirement (3)**, the petition includes a statement of Mr. McDiarmid's last known address. Accordingly, requirement (3) has been satisfied.

Regarding **requirement (4)**, the declaration filed on 07 March 2007 is regarded as having been signed by joint inventors Tunna and Tomkins on behalf of themselves and non-signing joint inventor McDiarmid. This declaration is acceptable for purposes of compliance with 37 CFR 1.497(a) and (b). As such, requirement (4) has been satisfied.

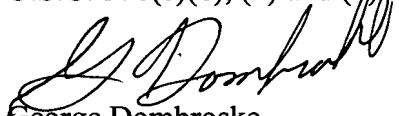
DECISION

The petition under 37 CFR 1.47(a) is **GRANTED**.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

The application is being returned to the National Stage Processing Branch for processing as the U.S. National Stage of the above-identified international application. Its date under 35 U.S.C. 371(c)(1), (2) and (4) is **07 March 2007**.



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